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October 1, 2011

BY ECF & facsimile (718) 613-2185

Honorable Kiyo A. Matsumoto
United States District Judge
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201

Re: U.S. v. Theodore Raines, 11 Cr. 641 (KAM)

Dear Judge Matsumoto:

I am the attorney for the defendant Theodore Raines, having been appointed pursuant to the provisions of Criminal Justice Act 18 U.S.C. § 3006A. The purpose of this letter is to reply to the letter of September 28, 2011 of Nayroby Casado, a detained material witness, requesting an order that the parties conduct a prompt Fed. R. Crim. P. 15 deposition of Ms. Casado, pursuant to 18 U.S.C. § 3144.

While the defendant concedes that Ms. Casado, as a detained material witness, may request to be deposed to facilitate her release without first satisfying the conditions of Rule 15 (a)(1), to wit: "exceptional circumstances and in the interest of justice,"¹ the defendant nevertheless does not concede or waive any objection to the government subsequently seeking to introduce Ms.

¹ The "exceptional circumstances" requirement of Rule 15 is met "if the witness' testimony is material to the case and if the witness is unavailable to appear at trial." U.S. v. Johnpoll, 739 F.2d 702, 708 (2d Cir. 1984). "Unavailability is to be determined according to the practical standard of whether under the circumstances the [party seeking to take the deposition] has made a good faith effort to produce the person to testify at trial." Johnpoll, 739 F.2d at 709.

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Casado's deposition in any proceeding against him, including trial or hearing; or for a finding that Ms. Casado is "unavailable as a witness" as defined in Fed. R. Evid. 804.

In addition, prior to the commencement of any deposition of Ms. Casado, the defendant demands copies of any motions, requests and supporting affidavits previously filed by the government requesting the arrest of Ms. Casado as a material witness and alleging that the testimony of Ms. Casado would be material in a criminal proceeding and that it may become impractical to secure her presence by subpoena, pursuant to 18 U.S.C. § 3144.

Your Honor's attention and consideration of this submission are, as always, greatly appreciated.

Respectfully submitted,

Peter Enrique Quijano

Peter Enrique Quijano

cc: Clerk of the Court (by ECF)
A.U.S.A. Tyler Smith (by email)
Heidi C. Cesare, Esquire (by email)